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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JANE DOE, JANE DOE II, JOHN DOE,  
E.C., JOSE MARQUEZ, and HOLLIS  
WILSON, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

GOODRX HOLDINGS, INC., CRITEO  
CORP., META PLATFORMS, INC., and  
GOOGLE LLC.

Defendants.

Lead Case No.: 3:23-cv-00501-AMO

**PLAINTIFFS' ADMINISTRATIVE  
MOTION FOR LEAVE TO FILE SUR-  
REPLY**

CONSOLIDATED CLASS ACTION

COMPLAINT FILED: February 2, 2023

Judge: Hon. Araceli Martínez-Olguín  
Date: March 28, 2024  
Time: 2:00 PM  
Courtroom: 10

1       **PLEASE TAKE NOTICE** that pursuant to Local Rule 7-11, Plaintiffs Jane Doe, Jane Doe  
 2 II, John Doe, E.C., Jose Marquez, and Hollis Wilson hereby move for leave of this Court to file a  
 3 short 3-page sur-reply in response to Meta Platforms, Inc.’s (“Meta”) new argument in its Reply in  
 4 Support of Motion to Sever Claims Against Defendant Meta Platforms, Inc. *See* ECF No. 190  
 5 (“Reply”). Plaintiffs’ proposed sur-reply is attached as **Exhibit A** to the Declaration of Christian  
 6 Levis (“Levis Dec’l”).

7       **I. PRELIMINARY STATEMENT**

8       On November 22, 2023, Meta moved to have the claims against it severed from the  
 9 remainder of the case for the purpose of having them consolidated in the *In re Meta Pixel Healthcare*  
 10 *Litigation*, Case No. 3:22-cv-3580-WHO (N.D. Cal. June 17, 2022) (“*Meta Healthcare*”) action.  
 11 *See* ECF No. 175 (“Motion to Sever”). Plaintiffs filed their Opposition to Meta’s Motion to Sever  
 12 on January 5, 2024. *See* ECF No. 188 (“Opposition”).

13       The same day Meta filed its Motion to Sever in this action, it filed a second motion<sup>1</sup> to sever  
 14 the claims in *Doe v. FullStory, Inc.*, No. 3:23-cv-00059-WHO (N.D. Cal.) (the “*Favor Action*”)—  
 15 an action involving Meta’s interception of health data from a reproductive health platform that  
 16 provides birth control—to have them consolidated with the *Meta Healthcare* action. *See Favor*  
 17 *Action*, ECF No. 107.

18       On January 17, 2024, Judge Orrick—the presiding judge in the *Meta Healthcare* action—  
 19 **denied**

20       Meta’s motion to sever the claims in the *Favor Action* after just eight minutes on the record.  
 21 *See Favor Action*, ECF No. 117 (“The claims against Meta [in the *Favor Action*] will continue in  
 22 [that] case along with the claims against the other defendants.”) (“January 17, 2024 Order”).<sup>2</sup> In  
 23 doing so, Judge Orrick “remind[ed] . . . counsel” that the “scope of” the *Meta Healthcare* case is

24  
 25  
 26 <sup>1</sup> As described in Plaintiffs’ Opposition, Meta previously moved to sever the claims against it in the  
 27 “*Favor Action*” in May 2023. *See* ECF No. 188 at 3-4. That motion was denied. *Id.*

28 <sup>2</sup> The January 17, 2024 Order is attached to the Levis Dec’l as **Exhibit B**.

1 how the court “determine[d] it” back in May 2023, “not [how] . . . [counsel] determine[s] it.” *Favor*  
 2 Action, Transcript of Hearing on January 17, 2024 (“January 17, 2024 Hr’g Tr.”) at 25:6-8.<sup>3</sup>

3 In rendering that earlier decision, Judge Orrick explained claims in “telemed” cases (like  
 4 *Favor* and this action) are “different” from those in the *Meta Healthcare* case (*Favor* Action,  
 5 Transcript of Hearing on May 16, 2023, ECF No. 78 at 6:14-17), which primarily concerns  
 6 “healthcare information” from “patient portals and related webpages.” *See Favor* Action, ECF No.  
 7 75 at 1. Because of this, Judge Orrick concluded in May 2023 that consolidation was neither  
 8 “necessary” nor “even desirable[.]” *Id.* at 2. His new order confirms this holding stands.

9 These decisions foreclose the relief Meta seeks here. Having twice explained the *Meta*  
 10 *Healthcare* action does not include telemed cases, this action—concerning primarily the  
 11 interception of prescription coupon data from the GoodRx Platform—is not related to, and should  
 12 not be consolidated with, the *Meta Healthcare* action.

13 Meta ignores the significance of this new decision on Reply. Meta now claims that the *Favor*  
 14 Action “present[ed] unique circumstances” making consolidation improper there, but not here.  
 15 Reply at 3. The only “unique circumstance” Meta points to is one allegation in the *Meta Healthcare*  
 16 amended complaint that expressly “exclude[d]” *Favor* in order to comply with Judge Orrick’s May  
 17 2023 decision. *Id.* (claiming *Favor* is different because the “Healthcare CAC . . . excludes . . . Hey  
 18 *Favor*”); *see also Favor* Action, January 17, 2024 Hr’g Tr. at 27:1-4 (counsel for *Meta Healthcare*  
 19 plaintiffs explaining “obviously we did not plead Hey *Favor* in the case because we understood  
 20 Your Honor’s order.”).

21 This does not make *Favor* a “unique” case. Reply at 3. Judge Orrick did not rely on counsel’s  
 22 artful pleading in finding the cases were distinct. In fact, he specifically admonished counsel that it  
 23 was the Court—not counsel—who determines the scope of the *Meta Healthcare* case. *Favor* Action,  
 24 January 17, 2024 Hr’g Tr. at 25:6-8. Plaintiffs seek leave to file a sur-reply to address more  
 25 thoroughly the implications of this new decision, as well as Meta’s claims that it has no bearing  
 26 here.

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27 <sup>3</sup> The January 17, 2024 Hr’g Tr. is attached to the Levis Dec’l as **Exhibit C**.  
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## II. ARGUMENT

District courts have the discretion to permit the filing of a sur-reply. *See, e.g., Herterich v. City & Cty of San Francisco*, No. C 19-7754 SBA, 2020 WL 12604897, at \* 5 (N.D. Cal. 2020) (“District courts have the discretion to permit surreply briefs”); *Imber v. Lackey*, No. 122CV00004DADHBK, 2022 WL 3648061, at \*1 (E.D. Cal. Aug. 24, 2022) (“[W]hether to permit . . . a surreply lies with the court’s discretion”). Allowing a sur-reply is appropriate where the movant raises new evidence or arguments after the non-movant files its opposition. *United States v. Venture One Mortgage Corp.*, No. 13-CV-1872 W (JLB), 2015 WL 12532139, at \*2 (S.D. Cal. Feb. 26, 2015); *see also Do v. Tri City Healthcare District*, No. 19CV2253-MSB (NLS), 2020 WL 6484633, at \*2 (S.D. Cal. Nov. 4, 2020) (granting sur-reply because party sought “to introduce new evidence and argument that Plaintiff never had an opportunity to review or correct.”).

Here, Judge Orrick’s January 17, 2024 Order was not available at the time Plaintiffs filed their Opposition. Meta cites to this decision in its Reply, claiming it is “inapplicable in this case” because the *Meta Healthcare* complaint “expressly excludes” allegations relating to the Favor platform. Reply at 3. Plaintiffs request leave to file a sur-reply to address this new decision and Meta’s new argument that it is inapplicable here. *See Venture One Mortgage Corp.*, 2015 WL 12532139, at \*2 (“If the Court is to consider the new evidence and arguments in Defendant’s reply brief, it must give Plaintiff an opportunity to respond.”); *see also Imber*, 2022 WL 3648061, at \*1 (E.D. Cal. Aug. 24, 2022) (granting sur-reply because plaintiff represented they will “address only the new arguments raised in the reply and be limited to four pages.”).

## III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs leave to file a 3-page sur-reply, attached as Exhibit A.

Dated: January 26, 2024

/s/ Christian Levis

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